IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISCELLANEOUS APPLICATION NO. 39 OF 2004.

State through Public
Prosecutor, Panaji. ... Applicant.

Versus

1. Piedade Nogero,
   r/o Bethmoddi, Kakoda,
   Curchorem.
2. Joquim Costa,
   r/o Bethmoddi, Kakoda,
   Curchorem. ... Respondents.

Mr. S.N. Sardessai, Public Prosecutor for the Applicant/State.

Mr. Y.V. Nadkarni, Advocate for the Respondent No. 1 under Legal Aid Scheme.

Miss S. Dessai, Advocate for the Respondent No. 2 under Legal Aid Scheme.

Coram : P.V. HARDAS, J.

Date : 1st April 2004.

ORAL ORDER.

The State being aggrieved by the Judgment passed by the Judicial Magistrate, First Class, Quepem, dated 31st October 2003, in Criminal Case No. 60/S/2002/A, acquitting the accused for an offence punishable under Section 429 read with Section 34 of the Indian Penal Code, has filed this application seeking leave to file an appeal against acquittal. On a notice being issued by this Court, the respondents/accused had appeared in person and had requested that advocates from the legal aid panel be appointed to represent them in the proceedings in this Court. Accordingly, by Order, dated 18th March 2004, Mr. Y.V. Nadkarni and Miss S.

Dessai, Advocates have been appointed to represent respondents 1 and 2 respectively. At the outset I must record my appreciation for the efforts taken by both the learned counsel and the assistance rendered to this Court in deciding this application.

2. The facts, in brief, as are necessary for the decision of this application are stated hereunder:-

A charge-sheet against the respondents came to be filed under Section 429 read with Section 34 of the Indian Penal Code on the allegation that on 13th July 2002, at about 8.30 a.m., at Bethmoddi, Kakoda, Quepem, both the respondents injured a she buffalo while the buffalo was attempting to enter their paddy field. The learned trial Court framed a charge against the respondents, who pleaded not guilty and claimed to be tried. The prosecution in support of its case examined 7 witnesses.

3. The learned Judicial Magistrate, First Class, Quepem, appreciating the evidence of the prosecution, found that the complainant P.W.1 Suhas Sawant Dessai had not stated that the she buffalo was beaten by the accused as the buffalo attempted to enter the paddy field. The learned trial Judge also found that there were various inconsistencies in his evidence. The

learned trial Judge also found that P.W.1 Suhas had admitted that the paddy field where the she buffalo was found was belonging to one Zambaulikar. The said agricultural field of Zambaulikar was lying fallow at the relevant time. The learned trial Judge then referred to the evidence of P.W.4 Vaikunth Sawant Dessai and P.W.6 Tulshidas Dessai, both of whom are eye witnesses. The learned trial Judge, in respect of the evidence of these witnesses, observed that there were material omissions amounting to contradictions. The learned trial Judge then examined the defence evidence in respect of the plea of alibi and found that nothing had been brought out in the cross-examination of the defence witnesses to discredit their version. The learned trial Court, therefore, held that the prosecution had miserably failed to prove the offence beyond reasonable doubt.

4. Record and proceedings have been called for and have been received. With the assistance of the learned counsel for the parties, I have perused the record and proceedings. The view taken by the learned trial Court is a possible view on the basis of the evidence of the witnesses examined by the prosecution. There is no perversity in the reasoning of the learned trial Court to warrant any interference by this Court. The application seeking leave to appeal is, thus, sans

merit and the same is dismissed. Leave refused.

(P.V. HARDAS)
JUDGE.

ed's.